

Service of Process Transmittal Form Plantation, Florida

01/23/2003

Via Federal Express (2nd Day)

TO: H. Douglas Kitts Attorney Sea Ray Boats, Inc. 2500 Sea Ray Boulevard Knoxylle, TN 37914

RE: PROCESS SERVED IN FLORIDA

FOR

SEA RAY BOATS, INC. Domestic State: FI

ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:

1. TITLE OF ACTION:

Matt Malkamaki, Pitf. vs Sea Ray Boats, inc., et al, Ofts.

2. DOCUMENT(S) SERVED:

Summons, Complaint, Exhibits

a, count:

Cuyahoga County Court of Common Pleas, OH

Case Number CVC3491288

4. NATURE OF ACTION:

Failure to comply with express written and Implied warranties and service contract in connection

with the purchase of certain 2001 Sea Ray 5400A boot, etc.

5. ON WHOM PROCESS WAS BERVED:

CT Corporation System, Plantation, Florida

6. DATE AND HOUR OF SERVICE!

By Certified mall on 01/23/2003 with Postmarked Date 01/17/2003

7. APPEARANCE OR ANSWER DUE:

Within 28 days

8. ATTORNEY(S):

Timothy P. Cannon (440) 357-5537 41 E. Erie Street Palnesville, OH 44077

9. REMARKS:

Trial by jury demanded.

i-Note sent 01/23/2003 to EDRETZKA@BRUNSWICK.COMENate sent 01/23/2003 to

DKITTS@SEARAY.COM

CC:

Edna Dretzka Paralegal Brunswick Corporation 1 N Field Court Lake Forest, IL 60045-4811

SIGNEO

CT Corporation System

PER

Anne Boutiller /DM

ADDRESS

1200 South Pine Island Road

Plantation, FL 33324 SOP WS 3005087980

Information contained on the transmittal form is recorded for C T Corporation System's record keeping purposes only and to permit quick reference for the recipient. This information does not constitute a legal opinion as to the nature of action, the amount of damaged, the answer date, or any information that can be obtained from the documents thomselves. The recipient is responsible for interpreting the documents and for taking the appropriate action,

16-CAB Duc # 1-1 Filed CIG2/14/03 0218/13. PageID #: 6 1:03-cv-0028 CASE NO. Rule 4 (B) Obio D1 CM 3380415 CV03491288 Rules of Civil

MATT MALKAMAKI VS.

SEA RAY BOATS, INC. ETAL

PLAINTIFF

Procedure **SUMMONS**

DEFENDANT

SEA RAY BOATS INC * CT CORPORATION SYSTEM -STATUTORY AGENT 1200 SOUTH PINE ISLAND RD FORT LAUDERDALE FL 33324-0000

Said naswer is required to be served on:



Plantiff's Attorney

TIMOTHY P CAMNON 41 EAST ERIE ST.

PAINESVILLE, OH 44077-0000

Case has been assigned to Judget

JOSEPH D RUSSO Do not contact judge. Judge's name is given for reference only.

You have been named defendant in a complaint (copy attached hereto) filed in Cuyahoga County Court of Common Pleas, Cuyahoga County Justice Center, Cleveland, Ohlo 44113, by the plaintiff named herein.

You are hereby summoned and required to answer the complaint within 28 days after service of this summans upon you, exclusive of the day of

Said answer is required to be served on Plaintiff's Attorney (Address denoted by arrow at left,)

Your answer must also be filed with the court within 3 days after service of said answer on plaintiff's attorney.

If you fail to do so, judgment by default will be rendered against you for the relief demanded in the complaint.

GERALD E. FUERST Clerk of the Court of Common Pleas



STAG Jan 14, 2003

COMPLAINT FILED 01/14/2003



SEA RAY BOATS INC 1200 SOUTH PINE ISLAND RD 1200 SOUTH PINE ISLAND RD FORT LAUDERDALE FL 33324-0000

CM\$N130

IN THE COURT OF COMMON PLEAS CUYAHOGA COUNTY, OHIO

MATT MALKAMAKI 9411 Headlands Road Mentor, OH 44060

CASE NO.

JUDGE

Plaintiff.

-vs-

COMPLAINT

(Jury Demand Endorsed Hereon)

SEA RAY BOATS, INC. C/o Statutory Agent, CT Corporation System 1200 South Pine Island Rd. Plantation, FL 33324

and

SEA RAY OF KNOXVILLE, LLC C/o Statutory Agent, Sharon Lee Marcum 9909 Kingston Pike Knoxville, TN 37922

and

MARINEMAX OF OHIO, INC.
Fka MARINEMAX OF TREASURE
COVE. INC.
C/O Statutory Agent
Csc-Lawyers Incorporating Service
50 W. Broad St.
Columbus. Ohio 43215

and

MARINEMAX SERVICES INC.
C/O Statutory Agent
Csc-Lawyers Incorporating Service
50 W. Broad St.
Columbus. Ohio 43215

and))
JOHN DOE, INC. Address unknown. Defendants))))

Case: 1:03-cv-00286-CAB Doc #: 1-1 Filed: 02/14/03 4 of 13. PageID #: 8

Now comes Plaintiff, Matt Malkamaki, by and through counsel, and for his Complaint against Defendants, states as follows:

BACKGROUND

- 1) Plaintiff. Matt Malkamaki, is an adult individual citizen and legal resident of the State of Ohio, residing at 9411 Headlands Road, Mentor, Ohio 44060.
- 2) Defendants, Sea Ray Boats, Inc., a Florida Corporation and Sea Ray of Knoxville. LLC a Tennessee Corporation, are qualified to and regularly do conduct business in the State of Ohio by and through their agent and/or authorized dealer. Marinemax of Ohio, Inc.
- 3) Defendants. Marinemax of Ohio, Inc., fka Marinemax of Treasure Cove. Inc., and Marinemax Services Inc., are Ohio Corporations qualified to do and regularly conducting business in the State of Ohio.
- 4) On or about August 28, 2001, Plaintiff purchased at 2001 Sea Ray 5400A boat manufactured and warranted by Defendants, bearing Boat Serial No. SERY0804J001540DA325, (A copy of said purchase agreement is attached hereto as Plaintiff's "Exhibit A" and fully incorporated herein).
 - 5) The boat was purchased in the State of Ohio and is registered in Ohio.

- The price of the boat, including registration charges, document fees and sales tax, but excluding finance charges, bank charges and other collateral charges not specified, yet defined and included under R.C. §1345.71 et seq. was approximately \$840,000.00.
- 7) Plaintiff states that as a result of the ineffective reasonable opportunity to care/repair made by Defendants, through the authorized dealer(s), the boat cannot be utilized for the purposes intended by Plaintiff at the time of acquisition and hence, the boat is worthless and/or substantially impaired.
- 8) In consideration for the purchase of the above boat. Defendants issued to Plaintiff several written warranties, including a two (2) year MaxCare warranty (Referenced in Plaintiff's attached "Exhibit A" under dealer-installed options).
- 9) Plaintiff notified Defendants and/or the authorized dealer(s) on one or more occasions, and/or formally notified Defendants by letter of Plaintiff's present intention to revoke acceptance of the boat and requested the return of all funds paid towards the boat.

COUNT

MAGNUSON-MOSS FEDERAL TRADE COMMISSION ACT AS TO BOTH DEFENDANTS

- 10) Plaintiff hereby reavers and incorporates by reference all statements and allegations previously set forth as if fully rewritten herein.
 - 11) Plaintiff is a "Consumer" as defined by U.S.C. §2301(3).
- 12) Defendants are "Suppliers" and "Warrantors" as defined by 15 U.S.C. \$2301(4) & (5).

- 13) The boat is a "Consumer Product" as defined by 15 U.S.C. §2301(1).
- 14) One or more of the warranties given to Plaintiff by Defendants was a "Written Warranty" as defined by 15 U.S.C. §2301(6).
 - 15) Plaintiff purchased a "service contract" as defined by 15 U.S.C. §2301(8).
- 16) Defendants have been unable, unwilling and/or has refused to conform the boat to the written warranty and/or service contract by repairing one or more nonconformities within a reasonable number of attempts or a reasonable amount of time.
- 17) Plaintiff states that Defendants have been afforded a reasonable opportunity to cure the boat's nonconformities pursuant to 15 U.S.C. §2310(e).
 - 18) Section 15 U.S.C. §2310(d)(1) provides:

Subject to subsections (a)(3) and (e) of this section, a consumer who is damaged by the failure of a supplier, warrantor, or service contractor to comply with any obligation under this chapter, or under a written warranty, implied warranty, or service contract, may bring suit for damages and other legal and equitable relief...

- 19) As a direct and proximate result of Defendants failure to comply with Defendants' express written and implied warranties and service contract. Plaintiff has and continues to suffer damages.
- 20) If Defendants maintain a qualified Informal Dispute Resolution Mechanism. Plaintiff has resorted to it at least forty (40) days prior to filing this Complaint and/or has pursued that process to its completion, as required by 15 U.S.C. §2310(a) and rules promulgated thereunder.
- 21) Pursuant to 15 U.S.C. §2310(d)(2). Plaintiff seeks all costs, including attorney fees and expert witness fees.

COUNT TWO

OHIO UNIFORM COMMERCIAL CODE AS TO BOTH DEFENDANTS

- 22) Plaintiff hereby reavers and incorporates by reference all statements and allegations previously set forth as if fully rewritten herein.
- The defects and nonconformities exhibited by the boat constitute a breach of contractual and statutory obligations of Defendants, including, but not limited to, the following:
 - a) Express Warranty
 - b) Implied Warranty of Merchantability: and
 - c) Implied Warranty of Fitness for a Particular Purpose.
- 24) At the time of delivery of the boat to Plaintiff and at all times subsequent thereto. Plaintiff has justifiably relied on Defendants express and implied warranties, obligations and representations with regard to the boat.
- 25) At the time of delivery of the boat and at all times subsequent thereto.

 Defendants were aware that Plaintiff was relying on Defendants' express and implied warranties, obligations and representations with regard to the boat.
- 26) Plaintiff has incurred damage as a direct and proximate result of Defendants breach and failure to honor its express and implied warranties, obligations and representations with regard to the boat.
- 27) Plaintiff has incurred damage as a direct and proximate result of the failure of essential purpose of Defendants express and implied warranties, obligations and representations with regard to the boat.

COUNT THREE

IMPLIED WARRANTY IN TORT AS TO BOTH DEFENDANTS

- 28) Plaintiff hereby reavers and incorporates by reference all statements and allegations previously set forth as if fully rewritten herein.
- 29) The defects and nonconformities exhibited by the boat constitute a breach of contractual and statutory and/or common law obligations of Defendants, including, but not limited to the following:
 - a) Implied Warranty of Merchantability sounding in Tort; and
 - b) Implied Warranty of Fitness for a Particular Purpose sounding in Tort.
- 30) At the time of delivery of the boat to Plaintiff and at all times subsequent thereto. Plaintiff has justifiably relied on Defendants' implied warranties, obligations and representations with regard to the boat.
- 31) At the time of delivery of the boat and at all times subsequent thereto. Defendants were aware that Plaintiff was relying on Defendants implied warranties, obligations and representations with regard to the boat.
- 32) Plaintiff has incurred damage as a direct and proximate result of Defendants breach and failure to honor its implied warranties, obligations and representations with regard to the boat.

COUNT IV

OHIO CONSUMER SALES PRACTICES ACT AS TO BOTH DEFENDANTS

33) Plaintiff hereby reavers and incorporates by reference all statements and allegations previously set forth as if fully rewritten herein.

- 34) Section 1345.01 et seq. is commonly known as, and will hereinafter be referred to as, the "Ohio Consumer Sales Practices Act" or "CSPA."
 - 35) Plaintiff is a "Person" as defined by R.C. §1345.01(B).
- 36) Defendants are "Suppliers" and "Persons" as defined by R.C. §1345.01(C) & (B).
- 37) Plaintiff's purchase of the boat is a "Consumer Transaction" as defined by R.C. §1345.01(A).
- 38) In connection with said transaction, Defendants committed unfair, deceptive and unconscionable acts and practices in violation of R.C. §1345.02 and R.C. §1345.03. Said acts and practices include, but are not limited to, the following:
- 39) Defendants representation that the boat contained a valid warranty, which would cause effective warranty repairs to be made within a reasonable time and within the warranty period, was untrue.
- 40) Defendants representation that the vehicle contained, as a remedy, an effective warranty, which would cause effective warranty repairs to be made within a reasonable time and within the warranty period, was false.
- 41) Defendants representation that the boat would have the natural benefits of being fit for its intended and ordinary purposes and merchantable was untrue.
- 42) Defendants representation that the boat was fit for ordinary purposes, was untrue.
 - 43) Defendants representation that the boat was merchantable was untrue.
- 44) Defendants knowingly committed all of the above-referenced unfair, deceptive and unconscionable acts and practices,

ACTS DECLARED UNFAIR, DECEPTIVE OR UNCONSCIONABLE BY ATTORNEY GENERAL RULES

- 45) In connection with said transaction. Defendants committed acts and practices that have been declared to be unfair, deceptive or unconscionable by rules adopted pursuant to R.C. §1345.05(B)(2).
- 46) Said acts and practices were committed after such rules were made available for public inspection pursuant to R.C. §1345.05(A)(3).

Said acts and practices include, but are not limited to, the following:

- 47) Defendants never disclosed any defects in connection with the sale of the boat as required by O.A.C. 109:4-3-16(B)(14).
- 48) Defendants knowingly committed all of the above-referenced unfair, deceptive and unconscionable acts and practices.

ACTS DECLARED UNFAIR, DECEPTIVE OR UNCONSCIONABLE BY OHIO COURTS

- 49) In connection with said transaction, Defendants committed acts and practices that have been declared violations of R.C. §1345.02 and/or R.C. §1345.03 by Courts of the State of Ohio.
- 50) Said acts and practices were committed after such court decisions were made available for public inspection pursuant to R.C. \$1345.05(A)(3). Said acts and practices include, but are not limited to, the following:
- 51) Defendants, who had a legal obligation to Plaintiff under the written warranty, breached, avoided and/or attempted to avoid its obligations to Plaintiff.
 - 52) Defendants failed to honor its implied warranty of merchantability.

JURY DEMAND

A trial by jury in the within action is hereby demanded on all issues except the determination of reasonable attorney fees and costs and the determination of which damages shall be trebled, which are reserved for determination by the Court in the event that Plaintiff prevails at a trial on the merits.

Timothy P. Campon James D. Falvey

Attorneys for Plaintiff

Blatkamolo, Man - Constant (See Kay)

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** ** Case: 1:03-cv-00286-CAB Doc #: 1-1 Filed: 02/14/03 13 of 13. PageID #: 17. Commendation and the Administration of the State of Management of the Association of the PURSUANT (O THIS AGREEMENT ARE SOLD BY STOCKED STOCKED FOR MAKES NO WYGRAYTHS ON US OWN BUILDED, EXPRESS OF THE PAGE ONE THE IMPLIFIED WYRKASTILS OF MERCHASTABILITY AND THATALLOR A PARTALLIAR PURPOSE. some soften gives that the constraints was an experience for soft for soft in the constraints of the constra of the among their with and water at the observation of the experience of the same of of America contrast he softweethots with this same of softwire M that's of same made and another conceaning some or analogical duringing to the The control of the co Propositivitias and some analysis and a fine of the contract o - . 37 **->** 00 (1/18) 11 h TO BE OTHER RV. 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I Huyer warrante that any traded in book motor and/or accessories are owned safely by Buyer, free and of most all bears on make a consist of a construction is or any based or zero a most of the basin this was consistent 5 PRIOR USL. Buyer acknowledges that a new book being parchased pursonal to this Agreement may have homes of use point to delivery to Buyer. This use may be the result of pretesting of the boar by the manufacturer, Sofler, or potential buyers, as well as observater transportation of the boar to the delivery site. MODEL OR DESIGN CHANGES. Bayes understands that the manufactures returns the right to make changes in the model or design of its new nouncial to the accessories on a group of the Duyer reversible and a Defension of not obligate glitter Seller or the manulación y la make corresponding. Campe em que a unestar com emotor, andres accessores eccente ny tare Agreefación entier before or after the delivery thereof is Traver ENTIRE AGREEMINA. This Agreement consumits the entire agreement netween the parties and no other verbal, written or printed represent in the colors of critical nearly are incorporation into this Agreement, onless in writing and signed by both parties. This Agreement supercodes any prior Paternase Agreement between 1603 and Seller for the purebase of a born, motor unefor accessiones that Bod not been on so thingen it stopped from a section of the Agreement. Seller disclarus by approximations of statements by any regards, employers or representances, which proceeds on a serior, and Burer backer of our or or or in his presentances or statements ATTORNEYS' FERS. In the resemble in the streets of the supplies an about by the entire of the territion this Agreement on to defend any law-off acceled out of this Agreement, then Billion and buy a long of the costs, including reasonable automorates. refreshes theory, or that apprehate ell bankstupley count proceedings in ordering to the control of control apprehate ell bankstupley count proceedings in ordering to the control of control apprehate ellowers expense and any other recently that was to described in any most of the state of the first of the state of t ID. GOVERNING LAW. THE PARTIES AGREE THAT THIS AGREEMENT SHALL BE GOVERNED BY THE LAWS OF THE STATE IN WHICH SELLER'S LOCATION DESIGNATED ON THE FRONT SIDE OF THIS ORDER IS SITUATED.

ASSIGNMENT: This Agreement may be be usughed by the dispersional transfers to the common or the Sedien

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